

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

741

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 23 1970

No. 23,510

Nathan J. Paulson
CLERK

UNITED STATES OF AMERICA,

v.

CHARLES R. JAMES,

Appellant.

Appeal from the United States District Court
for the District of Columbia

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TABLE OF CONTENTS

	<u>Page</u>
Table of Cases	ii
Statement of Issues Presented for Review	iii
Statement of the Case	1
The Government's Case	3
The Defense Case	6
Rebuttal	8
Defense Proffers to the Court in Support of Motions to Dismiss .	9
Argument	10
I. Whether the appellant was denied a speedy trial which resulted in his inability to locate a number of material and necessary defense witnesses which impaired his ability to defend charges against him.....	11
Conclusion	19

TABLE OF CASES

	<u>Page</u>
* <u>Court v United States</u> , 125 US App., DC 16 (1966).	18
* <u>Hanrahan v United States</u> , 348 Fed 2d 363 (1965)	18
* <u>Harling v United States</u> , 401 Fed 2d, 392 (1968)	18
* <u>Hedgepath v United States</u> , 364 F.2d 624, 626 (1966)	16
* <u>Jackson v United States</u> , 351 Fed 2d, 821 (1965)	17
* <u>Petition of Provoo</u> , 350 US 857 (1955)	18
* <u>Ross v United States</u> , 345 Fed 2d, 210 (1965)	17
* <u>United States v Ewell</u> , 383 US 116 (1965)	16
* <u>United States v Laustman</u> , 258 Fed 2d, 475 (1958)	18

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the appellant was denied a speedy trial which resulted in his inability to locate a number of material and necessary witnesses which impaired his ability to defend charges against him.

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(This case has previously been Before this Court and was entitled
Charles R. James, Appellant vs. United States of America,
Appellee No. 21917)

"References to Rulings"

1. Motion for Speedy Trial, filed 1/10/68 and denied 1/31/68 by the Honorable Howard F. Corcoran.
2. Motion to Dismiss for Lack of Speedy Trial, argued 6/27/69 before the Honorable Chief Judge Curran and denied in a memorandum and order dated 6/27/69.
3. Oral motion to dismiss for lack of speedy trial before the Honorable William B. Jones on 6/30/69 as set out in Transcript Pages 5 - 19 and denied on page 19 of the transcript.

UNITED STATES COURT OF APPEALS
for THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,510

UNITED STATES OF AMERICA

v.

CHARLES R. JAMES,

Appellant.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

The appellant was arrested on the 20th day of November, 1966, having been charged with first degree murder and possession of a prohibited weapon in violation of 22 DCC 2401 and 3214 (a) and (c). On the 29th day of December, 1966 an indictment was returned containing the two counts as set out above. The two count indictment in Criminal Case No. 1461-66 alleged the first degree murder of his wife Darlene James and the possession of a prohibited weapon, specifically a sawed-off shotgun, on November 19, 1966 in the District of Columbia.

The appellant was sent to St. Elizabeths Hospital in December of 1966 and a letter was received from St. Elizabeths Hospital advising that the defendant was competent to stand trial, as is noted in the record on the 1st day of February 1967. The case was called on the 9th of February 1967 to determine the mental competency of the defendant. The mental competency hearing was set for the 24th of

February 1967, there being no counsel present on February 9, 1967. On the 31st of March 1967 an order was entered finding the defendant mentally competent to stand trial. On April 7, 1967 a copy of the indictment was given to the defendant and the defendant arraigned and pled not guilty to the charges against him. The defendant was remanded to the D. C. Jail at that time.

Defendant moved the Court on the 10th of October 1967 to be released on personal recognizance. The motion was argued on the 20th of October 1967 and was denied on the 27th day of October, 1967. On the 9th of November 1967 a capital list of jurors was served personally on the defendant at D. C. Jail. On the 10th day of January 1968 a motion by the defendant to dismiss the indictment for lack of prosecution and denial of a speedy trial was filed. On the 31st of January 1968 the motion was heard and argued and denied.

Trial commenced on February 19, 1968 and on February 21, 1968 the jury found the appellant guilty on Count 1, first degree murder, but could not agree upon punishment, and also guilty on Count 2, possession of a prohibited weapon, specifically a shotgun. On March 29, 1968 the District Court sentenced the appellant to the term of life imprisonment on Count No. 1 and one year on Count No. 2, the said sentences to run concurrently. The appellant's notice of appeal was filed on March 29, 1968. On the 31st day of January 1969 the United States Court of Appeals remanded the case to the District Court for a new trial. This remand was based upon the joint motion of the Government and the defense for error confessed by the Govern-

ment in closing arguments. On the 28th day of March 1969 an order appointing Lawrence E. Freedman counsel and leave to proceed forma pauperis was entered.

On the 23rd of May 1969 the appellant filed a motion to dismiss for lack of speedy trial, which motion was denied on June 27, 1969. The motion to dismiss for lack of speedy trial was renewed orally on the 30th day of June 1969, which motion was denied on that date. The case came on to be heard on the 1st day of July and was tried the 1st, 2nd and 3rd days of July when the jury returned a verdict of guilty of first degree murder, Count No. 1 of the indictment. Count No. 2 of the indictment was dismissed on motion of the Government. On the 3rd day of July 1969, the appellant was sentenced to life imprisonment and notice of appeal was filed on the 3rd day of July 1969.

THE GOVERNMENT'S CASE

Charles R. James (hereinafter referred to as James) and his wife Darlene had been married for approximately ten years. (Tr. 148) They had been separated for about a month prior to Darlene's death, on November 19, 1966, and had been separated for at least five or six times before that. (Tr. 148) Darlene was at that time seeing another man named "Sugar". (Tr. 150-151)

James was described by two witnesses, Mr. Brady and Mr. Jones, as being a light drinker or a moderate drinker with some confusion as to how much alcoholic intake there was on the part of James. Frank Mastbrook stated that he had received a phone call from John Mahoney who was at that time living with James. (Tr. 97) In response

to that phone call, wherein Mahoney stated that he had a smoker and he was going to blow his wife away (Tr. 97), Mastbrook went over to Mahoney's house to calm Mahoney down as Mahoney had quite a temper and Mastbrook knew it. (Tr. 97, 98). At that time Mastbrook had a conversation with James wherein James stated that he was going to blow his wife away because she had been running around with another man, his best friend. (Tr. 98) He said he was going to get a gun and kill his wife. (Tr. 98) There was a considerable amount of drinking going on at that time by James (Tr. 99) and James was pretty high. (Tr. 100) James had received a sort of deposition from a girl named Maureen (Tr. 106) which deposition stated that Maureen had witnessed Darlene in bed with some man named Sugar who was James' best friend. (Tr. 107) James was extremely upset about his wife having relations with another man and had been drinking considerably at this time. (Tr. 107) He was very definitely under the influence of liquor. (Tr. 107, 108) Mastbrook further stated that he had seen Mahoney and James sit and chant that they would "go up to her, blow her away, and then ride the great lightning bolt to the promised land." (Tr. 110) Mastbrook described this as weird. Mastbrook further testified that James was a steady drinker and had been drinking continuously throughout that period. (Tr. 110, 111, 112)

On November 19, 1966 James asked one William Hector if he would take him downtown so that he could bring clothes to his wife. (Tr. 72) James drove around with Hector and one Mr. Beesmer and their wives and did some shopping. (Tr. 72, 73) While on this shopping trip, James bought a pint of liquor and drank it himself. (Tr. 73, 74)

The group then left to take James and the clothes down to his wife. On the way down they stopped at a gas station where James bought a six pack of beer and drank it himself. (Tr. 76) The group pulled into a parking lot across from the Madison Hotel (Tr. 76), got out of the car and walked over to the front of the hotel (Tr. 77). At that time Hector had his attention called to the sawed-off shotgun by James who first thought he would give the sawed-off shotgun to Hector but then changed his mind stating that he really loved his wife and he would not hurt her. (Tr. 77) James went into the Madison Hotel where his wife was working and asked an employee, Mr. Coy Butler, to tell his wife Darlene that he was there. (Tr. 114,115) Butler stated that he did not detect the odor of any alcohol on James nor did James appear to be under the influence of alcohol. (Tr. 115,116) James and Darlene then joined Hector and Beesmer outside where they walked back towards the car. (Tr. 78) Hector and Beesmer were behind James and Darlene and observed James and Darlene get into an argument as they were walking along. (Tr. 78) James then pushed Darlene away from him, and as he did so fired the shotgun. (Tr. 87,88,89) Hector testified that James was under the influence of alcohol at this time. (Tr 95)

One Helen Hamilton testified that she observed a tall man outside of her apartment house going through the parking lot with an object in his hand that looked like a sawed-off shotgun. (Tr 132) This was after she heard a sound that sounded like a gun. (Tr 132) This very tall man climbed over a wall and went down Massachusetts Avenue. He then returned to the area, threw this object down and went back up

the street. (Tr 132, 133) Miss Hamilton then went outside where they discovered a sawed-off shotgun and observed the body of a young lady in the parking lot. (Tr 135)

One Dellmass Leroy Smith, the janitor in the apartment building where Helen Hamilton is a tenant, went outside with Miss Hamilton and discovered the shotgun previously described. (Tr 137, 138)

Detective Spicknall testified that the shotgun identified was the gun found at the scene where Darlene James had died. (Tr 143, 144) It was further stipulated that the deceased died of a shotgun blast to the body and further that the deceased was five feet, four inches tall and 115 pounds in weight.

THE DEFENSE CASE

The defense case began with the stipulation showing that James, on several occasions, went to the Bureau of Mental Health, Prince Georges County, Alcoholic Rehabilitation Clinic, and that he was treated for a short period of time at that clinic. He went there voluntarily several times in October. (Tr 198) Edward L. McKeever testified that he in his duties as Deputy United States Marshal had observed James on the 21st of November 1966 after he was arrested. Mr. McKeever observed James and described his behavior as Irrational. (Tr 200) He mumbled to himself incoherently like he was dazed (Tr 200).

Maureen Westover was next called as a defense witness. She stated that she had stayed with the Jameses in their home from August 1966 until October 1966 and was the baby-sitter for the Jameses. (Tr 206) She testified that she was aware of an individual named

Sugar whose was James' best friend. James' wife and Sugar were living together and had been dating for a long time. (Tr 206,207) Sugar was originally a drinking friend of James'. (Tr 207) On many occasions Maureen Westover double dated with Sugar and Darlene James and observed their activities, necking and kissing. (Tr 207) There were numerous occasions when these activities were observed by the witness. (Tr 208,209) On occasions the witness heard and observed the man known as Sugar and James' wife having relations in the bedroom of the marital abode. (Tr 208-210) A statement written by Mrs. Westover, when her name was Maureen Fahrenwald, her maiden name, was given to James (Tr 219). This statement told of the events between James' wife and Sugar. James knew also that Sugar had a gun. (Tr 212) James had been threatened by Mrs. James as was testified to by Mrs. Westover when she overheard a telephone conversation between James and Mrs. James (Tr 213). James had been drinking continuously at this time and very heavily (Tr 213-214). Darlene James would, together with Sugar, attempt and succeed in getting James drunk. James would then pass out and Darlene and Sugar would have sexual relations. (Tr 215-216)

Dr. Straty H. Economon testified that James was hospitalized at St. Elizabeths Hospital from December 2, 1966 until February 1, 1967. He was under observation during that period. He was seen at a medical staff conference on the 25th of January 1967 at which time he was diagnosed. (Tr 253) Dr. Economon stated that he was of the opinion that James was suffering from a mental illness at the time of the alleged offense. (Tr 255) The mental illness was specifically

a passive aggressive personality disturbance, passive dependant type.

(Tr 256) It was the quantitative sense of the passive aggressive personality trait that made it a disturbance or a mental illness.

(Tr 256,257) Dr. Economon went on to describe that he considered James' activities as a result of his mental illness. (Tr. 257-265)

Dr. Eugene C. Stammeyer, a Supervisory Clinical Psychologist at St. Elizabeths Hospital, testified that he examined James and determined that he was suffering from a mental disorder on November 19, 1966. Dr. Stammeyer said that he classified James as a passive aggressive personality, passive dependent type and that he was also an alcoholic. (Tr 305-310)

REBUTTAL

The Government in rebuttal called Dr. Mauris M. Platkin, also a psychiatrist at St. Elizabeths Hospital, who testified that he had examined Charles James and in his opinion James was not suffering from any mental illness, mental disease or defect on November 19, 1966. (Tr 357-365)

The Government also called in rebuttal William G. Spaulding of the Prince George's County, Maryland Police Department. Officer Spaulding testified that he saw James on November 20, 1966, and that at the time Officer Spaulding saw James he was rational and he did not detect any signs of alcohol or bizarre behavior on him. (Tr 351, 352.)

DEFENSE PROFFERS TO THE COURT IN SUPPORT OF MOTIONS TO DISMISS

The appellant, by counsel, proffered to the Court the following which was a result of investigations by counsel and by a private investigator provided by the Legal Aid Agency who ascertained that these individuals did exist and were known to James at the time of the offense but had since moved from the area and there was no further trace of them. I should note at this point that the investigator was thorough and that he did provide the location and the testimony was given in Court of one witness who was not able to be found at the first trial. The only witnesses provided by the defense at the first trial were the psychiatrists and psychologists.

The witnesses and their testimony as proffered to the Court would have been as follows:

1. Mr. Robert Seeman to testify that the defendant drank heavily and further that the defendant, while under the influence of liquor, acted quite differently, namely, fighting and aggressive while drunk as against being a completely different individual when he was sober. He could further testify as to the appellant's long history of alcohol usage.
2. Mr. and Mrs. Joseph Smith of Alpine Street could testify as to the appellant's drinking problem, the amount that he drank, and the effect of the drinking on him. They could further testify as to the wife's behavior and the fact that the wife's paramour had a gun. They could further testify as to the substantial difference in the character of the appellant between the times he was sober as against

the times he was drunk.

3. Harold H. Love, alias Sugar, who is the paramour of the deceased. He could testify as to the affair that he was having with the appellant's wife, that he would intentionally get the appellant drunk, that the appellant was a different person when drunk than sober in that his whole mental outlook was different, that Love owned a gun and the appellant knew it.

4. John Mahoney would be able to testify as to his personal observations of the appellant, his degree of sanity, the state of his sobriety on the day of the offense, the fact that the appellant had been drinking all day and drank himself into a stupor about two o'clock that afternoon, that the appellant was drunk at the time of the commission of the offense, that the appellant when he was drunk had crying spells and severe depression, and that his behavior when the appellant was drunk was substantially different than that when he was sober, namely, that he was not an aggressive person and was a nice individual when sober and was exactly the opposite when drunk.

5. Frank Smith and Carol Smith. This husband and wife saw the appellant immediately after the commission of the offense and could have testified that he was drunk at the time and that they saw him immediately after the offense was committed. They could further make the same comparisons in his behavior as set out previously and they could further testify that the next day when they went to get a newspaper and the appellant saw what had happened in the newspaper, he didn't remember a part of it or realize what had gone on.

6. A young man named Jimmy who is Carol Smith's brother also saw the appellant immediately after the commission of the offense and also on the date of his arrest. This man could testify that at the time of the arrest, the appellant was not sober as was testified to by the police officer, and that in fact he was quite drunk and still drunk from the previous day.

7. Joseph Smith could testify as to the drinking habits and problems of the appellant and the fundamental change in personality of the appellant when he was under the influence of liquor. (Transcript of Friday, June 27th, 1969 before the Honorable Chief Judge Curran, pages 3 to 13 and transcript of June 30, 1969 before the Honorable William B. Jones, pages 2 to 19).

ARGUMENT

I. Whether the appellant was denied a speedy trial which resulted in his inability to locate a number of material ~~and~~ necessary defense witnesses, which impaired his ability to defend charges against him.

Although in a previous appeal in this matter to the United States Court of Appeals of the District of Columbia the question of lack of speedy trial was raised, the Court never reached the question as the Government agreed they had committed error in their comments in the summation to the jury and on the basis of that the Court reversed and remanded a new trial without reaching the question of speedy trial.

The appellant was arrested on the 20th day of November 1966, one day after the commission of the offense. The defendant has been in

custody since that time. On the 2nd of December, 1966, the appellant was committed to St. Elizabeths Hospital for an evaluation. On the 27th day of January 1967 the St. Elizabeths Hospital informed the Court the defendant was capable of standing trial. A grand jury indictment was returned on December 29, 1966 and arraignment set for January 13, 1967 which was continued until the report from St. Elizabeths Hospital came in. On February 9, 1967 the case was called to determine the competency of the appellant, but that hearing was set for February 24, 1967. Again that matter was continued until March 17, 1967 and again until March 31, 1967. On March 31, 1967 the Court entered an order ruling that the appellant was mentally competent to stand trial. On April 7, 1967 the appellant was arraigned and pled not guilty and remanded to jail. There was a trial date set on August 16, 1967 and again on November 13, 1967. Up until November 13, 1967 none of the delays involved were attributable to the defendant and he stood ready and willing to go forward with his case and was incarcerated at the time. On November 13 counsel at that time for the appellant was involved in another trial and for that reason a short continuance was had at the behest of the defense counsel. However this matter did not come again before the Court until January 31, 1968 when a motion to dismiss the indictment was heard and denied. The case was set for February 19, 1968 when it was tried on the 19th, 20th and 21st of February, 1968. It should be noted that the defendant has been incarcerated at all times during these proceedings; and from November 20, 1966 (the day of his arrest) until February 19, 1968 (the date of his trial) with the
ex

exception of a short period of incarceration for mental examination and a short delay because counsel was involved in ~~another trial~~ at the time, all delays have been at the behest of the Government and requests for continuances have been at the behest of the Government.

The Court has previously admonished the Government that the defendant cannot be retained in jail forever pending a trial and that in the event that something was not done about such a situation very shortly, the Court would have to take proper steps with regard to the release and dismissal of the charges against the defendant.

On the 20th day of October 1967 at hearings wherein the Government requested a continuance, on page 9 of the transcript of the hearing, the Court stated: "It's quite important. You can't keep a man in jail forever." The Court further stated, page 10 of the transcript of the hearing, October 20, 1967, "You are running into a situation. We are going to have a dismissal for want of speedy trial pretty quick." Mr. Collins, the Assistant United States Attorney, responded to the comment of the Court on page 10 as follows: "Well, that is true. I mean if it goes too much longer that is very true, but as I say, circumstances beyond our control have caused these witnesses to be sent to Vietnam." The Court went on to state on page 13 of the transcript, "You can't keep the man sitting jail forever." To this Mr. Collins responded, "No, I realize that." To which the Court responded, "You have to give him a trial sometime." Mr. Collins responded to the Court, "I realize that, Your Honor." The above quotes all appear on page 13 of the transcript of the hearing of October 20, 1967.

A subsequent hearing was had on the 27th day of October 1967 where, on page 17 of the transcript of the hearing, the Court again admonished the Government stating, "You can't keep a man sitting in jail forever."

However, in spite of this, the trial was not held until the 19th of February, 1968, which trial resulted in the conviction, which conviction was reversed with the agreement of the Government because of prejudicial error made by the prosecuting attorney at the trial of the case.

The matter was finally tried again in July of 1969, and until such time the defendant had not had a fair trial, free from any prejudice to which he is entitled under the Constitution of the United States. Defendant, as set out in the proffers to the Court concerning the unavailability of witnesses because of the long delay between arrest and trial, was not able to properly defend against the charges against him because of this delay which delay was caused by the Government, a delay of more than two and one-half years.

The defense did, just prior to the trial of this matter, seek continuances and decertification so that the defense would have time, together with the detectives from the Legal Aid who had assisted in the preparation of the defense, to find the various witnesses who were missing.

It should be noted that the evidence proffered to the Court which would have been the evidence of the witnesses who were unable to be located because of the long delay, would have been evidence that was directly in point with the defense of insanity and the defense of

alcoholism, and specifically the defense that the appellant was under the influence of alcohol at the time of the commission of the offense.

Some evidence of this was brought out in the trial together with the evidence of the relationship between the appellant, his wife and the man named Sugar. However, much more corroborative evidence as well as much more detailed evidence concerning the relationship between the individuals and the appellant's relationship to alcohol and his mental state at the time would have been brought out by these other witnesses.

The existence of these individuals and the fact that they were in the locality at the time of the incident and their relationships to the appellant were established by the investigator, which information was proffered to the Court. Of course, one must rely upon the appellant to ascertain as to what their evidence would have been had they been able to testify, had they been able to be located. Certainly if they cannot be located it is difficult to have any other type of corroborative evidence as to what they would say. However, in this case, we do have evidence from other witnesses, some Government witnesses as well as one defense witness, that the facts so asserted were correct; namely, concerning the relationship between the appellant, his wife and the man named Sugar, and also the heavy intake of alcohol on the part of the appellant, the effect that it had on him, and generally his state of mind at the time as was later described by the psychiatrist and which would have been substantially developed by the lay testimony, if such witnesses could have been located.

The appellant recognizes that the delay from December 2, 1966 to February 1, 1967 was a result of the appellant's motion for psychiatric examination, and it was approximately two more months before the Court held a hearing on the appellant's mental competency to stand trial. However, as of February 1, 1967 appellant was ready for such hearing and certified to be ready by St. Elizabeths Hospital. But the case was then scheduled for trial on three different dates, August 1, August 21 and November 13, 1967. Each time the Government requested continuances. The appellant was not tried until February 19, 1968. The appellant was in custody the full time while awaiting trial.

"The Sixth Amendment's guarantee of a speedy trial ... is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself." United States v Ewell, 383 US 116 (emp~~1965~~3;1966); Hedgepath v United States, 364 Fed 2d, 684 (1966)

The Court in the Hedgepath case set down tests by which a case may be reviewed to see if there has been constitutional error by delay.

"There is no touchstone of time which sets a fixed maximum period that automatically requires application of the Sixth Amendment and dismissal of the indictment. Time is but one factor, albeit the most important; the longer the time between arrest and trial, the heavier the burden of the Government in arguing that the right to a speedy trial has not been abridged. Other factors to be considered are the reasons for the delay, the

diligence vel non of prosecutor, court and defense counsel, the likelihood, or at least reasonable possibility, that the defendant has been prejudiced by the delay. It must be borne in mind that the prosecution, not the defense, is charged with bringing a case to trial. The Government may not 'sit back' and then argue that the defendant's inaction conclusively waived his right to a speedy trial. On the other hand, it is equally clear that the Constitution cannot be applied so as to reward defense counsel who tolerates delay for tactical reasons."

It should be noted that at no time did the defense counsel or the appellant acquiesce in the delays. Motion was made, both prior to the first trial and the second trial, for a dismissal because of lack of speedy trial. Indeed, the only delays that could even remotely be attributed to the defendant were the examination at St. Elizabeths Hospital for a period of approximately two months and a short delay of approximately two weeks because defense counsel was in another trial at the time the trial was to be held. However, from the time of arrest to the time of the first trial was from November 20, 1966 to February 19, 1968. Further, on appeal, the Government acquiesced that they had committed error and again the trial was held in July of 1969 from which trial appeal is now taken.

The accused should not be forced to labor under an exacting burden of proof, as the same would not be possible in most cases. The appellant must show, however, that he had a plausible claim. Jackson v United States, 351 Fed 2d, 821 (1965); Ross v United States, 345 Fed 2d, 210 (1965)

As is in the Jackson case, supra, the delay in this case was the clear responsibility of the Government and was arranged solely for its advantage. It is submitted that an analysis of the particular

circumstances of this case show that appellant was impaired in his defense due to the denial of a speedy trial. Hanrahan v United States 348 Fed 2d 363 (1965).

The Court has reached these questions upon numerous occasions. In addition to the cases previously cited, the Court reached the question Harling v United States, 401 Fed 2d, 392 (1968), United States v Laustman, 238 Fed 2d, 475 (1958); Petition of Provoe, 350 US 857 (1955); and Court v United States, 125 US Appeals, D. C. 16 (1966).

In each of these cases the Court set out basically the same principles previously enumerated herein. The question becomes one of time, one of burden and one of prejudice. It is respectfully submitted by the appellant that the amount of time which the appellant was incarcerated without being brought to trial was an unreasonable delay, and also an unnecessary one. It is further respectfully submitted by the appellant that this delay was at the behest and within the control of the Government, and that the appellant was not responsible for other than a few minor delays as previously set out. It is further respectfully submitted that the appellant was severely prejudiced as previously set out and that he was not able to properly defend the charges against him as a direct result of not being able to locate and have testimony of a number of witnesses, which witnesses were unavailable because of the long delay between arrest and trial.

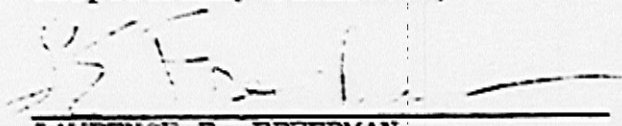
CONCLUSION

The appellant respectfully submits that he has been severely prejudiced by the long delay which delay was through no fault of his own. The appellant further respectfully submits that this prejudice was because he was unable to locate and have at his trial the testimony of certain essential witnesses which witnesses were unavailable to him because of the long delay.

Appellant respectfully submits that because of this, he has been denied his right to a speedy trial.

This right to a speedy trial, as set out in the Constitution of the United States, was designed to stop this type of problem, this type of prejudice against a defendant who has been long incarcerated and unable to properly defend himself through no fault of his own.

Respectfully submitted,



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